

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHARLES L. MOORE, II,)	
)	
Plaintiff,)	
vs.)	NO. CIV-15-688-HE
)	
LT. PANTOJA,)	
)	
Defendant.)	

ORDER

Plaintiff Charles L. Moore II, a state prisoner appearing *pro se*, filed this § 1983 action against defendant Lt. Juan Pantoja and two other correctional officers at the Oklahoma State Reformatory, Sgt. Matthew Harvey and Tina Mangalona, alleging a violation of his Eighth Amendment rights. Consistent with 28 U.S.C. §636, the matter was referred to Magistrate Judge Charles B. Goodwin for initial proceedings. Plaintiff dismissed his claims against the two other defendants on January 27, 2016, *see* Doc. #26, p. 2,¹ and only an excessive force claim against defendant Lt. Pantoja remains. The magistrate judge has issued a Report and Recommendation (“Report”) recommending that an amended motion for summary judgment filed by defendant Pantoja be denied. Defendant Pantoja has filed an objection to the Report.

Plaintiff’s claim is based on an alleged incident that occurred on November 24, 2014. Plaintiff alleges that defendant Pantoja entered his cell while he was taking his heart and thyroid medication, grabbed him by the throat and threw him violently to the ground.

¹ References to documents are to the CM/ECF document and page number.

Plaintiff asserts that Pantoja let him stand, but then sprayed him with mace for twenty to thirty seconds. Plaintiff claims he was “completely docile and uncombative” during the entire episode. Doc. #1, p. 3.

In his motion for summary judgment, defendant Pantoja raises the affirmative defense of qualified immunity.² The magistrate judge concluded plaintiff alleged facts supported by the record that, if established at trial, were sufficient to show defendant violated his clearly established Eighth Amendment right to be free from excessive force. In his objection defendant asserts that “[p]laintiff’s conclusory allegations are insufficient to put a material fact in dispute concerning the November 2014 incident.” Doc. #72, p. 3. As the magistrate judge pointed out, “[d]efendant has provided only an opposing account of what happened and not the type of inarguably contradictory record that would allow the Court to disregard Plaintiff’s verified allegations for qualified-immunity purposes.” Doc. #71, p. 8.

Having performed a *de novo* review, the court agrees with the magistrate judge’s conclusions and his analysis. Accordingly, it adopts the Report and Recommendation and denies defendant’s amended motion for summary judgment [Doc. #49].

² *He also raised the defense that plaintiff failed to exhaust his administrative remedies, which the court previously rejected. See Doc. #69.*

IT IS SO ORDERED

Dated this 12th day of March, 2018.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE